

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
JUDICIAL MATTERS
AMENDMENT BILL**

[B 95—97]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 95A—97]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WYSIGINGSWETSONTWERP
OP GEREGETELIKE
AANGELEENTHEDE**

[W 95—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 95A—97]

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AMENDMENTS AGREED TO
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JUDICIAL MATTERS AMENDMENT BILL
[B 95—97]
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CLAUSE 1

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause 1:

Substitution of section 73 of Act 24 of 1936, as amended by section 20 of Act 16 of 1943, section 24 of Act 99 of 1965 and section 1 of Act 78 of 1980

1. The following section is hereby substituted for section 73 of the Insolvency Act, 1936:

“Trustee may obtain legal assistance

73. (1) Subject to the provisions of this section and section 53(4), the trustee of an insolvent estate may with the prior written authorization of the creditors engage the services of any attorney or counsel to perform the legal work specified in the authorization on behalf of the estate: Provided that the trustee—

(a) if he or she is unable to obtain the prior written authorization of the creditors due to the urgency of the matter or the number of creditors involved, may with the prior written authorization of the Master engage the services of any attorney or counsel to perform the legal work specified in the authorization on behalf of the estate; or

(b) if it is not likely that there will be any surplus after the distribution of the estate, may at any time before the submission of his or her accounts obtain written authorization from the creditors for any legal work performed by any attorney or counsel,

and all costs incurred by the trustee, including any costs awarded against the estate in legal proceedings instituted on behalf of or against the estate, in so far as such costs result from any steps taken by the trustee under this subsection, shall be included in the cost of the sequestration of the estate.

(2) Subject to the provisions of subsection (3), costs incurred under this section, except costs awarded against the estate in legal proceedings, shall not be subject to taxation by the taxing master of the court if the trustee has entered into any written agreement in terms of which the fees of any attorney or counsel will be determined in accordance with a specific tariff: Provided that no contingency fees agreement referred to in section 2(1) of the Contingency Fees Act, 1997 (Act No. 66 of 1997), shall be

entered into without the express prior written authorization of the creditors.

(3) If—

- (a) the trustee has not entered into an agreement under subsection (2); or
- (b) there is any dispute as to the fees payable in terms of such an agreement,

the costs shall be taxed by the taxing master of the High Court having jurisdiction or, where the costs are not subject to taxation by the said taxing master, such costs shall be assessed by the law society or bar council concerned or, where the counsel concerned is not a member of any bar council, by the body or person designated under section 5(1) of the Contingency Fees Act, 1997.

(4) No bill of costs based upon an agreement entered into under subsection (2) shall be accepted as cost of the sequestration of the estate, unless such bill is accompanied by a declaration under oath or affirmation by the trustee stating—

- (a) that he or she had been duly authorized by either the creditors or the Master, as the case may be, to enter into such an agreement;
- (b) that any legal work specified in such bill has been performed to the best of his or her knowledge and belief;
- (c) that any disbursements specified in such bill have been made to the best of his or her knowledge and belief; and
- (d) that, to the best of his or her knowledge and belief, the attorney or counsel concerned has not overreached him or her.

(5) Notwithstanding anything to the contrary contained in this Act, the Master may disallow any costs incurred under this section if the Master is of the opinion that any such costs are incorrect or improper or that the trustee acted in bad faith, negligently or unreasonably in incurring any such costs.”.

CLAUSE 2

Clause rejected.

CLAUSE 3

Clause rejected.

CLAUSE 4

Clause rejected.

CLAUSE 5

Clause rejected.

CLAUSE 6

Clause rejected.

CLAUSE 7

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

Amendment of section 50 of Act 51 of 1977, as amended by section 1 of Act 56 of 1979, section 37 of Act 122 of 1991, section 1 of Act 75 of 1995 and section 1 of Act 85 of 1997

3. Section 50 of the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the substitution for subparagraph (ii) of paragraph (d) of subsection (1) of the following subparagraph:

“(ii) or will expire at, or if the time at which such period is deemed to expire under subparagraph (i) or (iii) is or will be, a time when the arrested person cannot, because of his or her physical illness or other physical condition, be brought before a lower court **[for the purposes of an order for his or her further detention]**, the court before which he or she would, but for the illness or other condition, have been brought **[for the purposes of such an order]**, may **[upon]** on the application of the prosecutor, which, if not made before the expiration of the period of 48 hours, may be made at any time before, or on, the next succeeding court day, and in which the circumstances relating to the illness or other condition are set out, supported by a certificate of a medical practitioner, **[order]** authorise that the arrested person be detained at a place specified by the court and for such period as the court may deem necessary so that he or she may recuperate and be brought before the court **[for the purpose of an order for his or her further detention for the purposes of his or her trial or his or her release]**: Provided that the court may, on an application as aforesaid, authorise that the arrested person be further detained at a place specified by the court and for such period as the court may deem necessary; or”;

- (b) by the substitution for subparagraph (aa) of paragraph (a)(i) of subsection (6) of the following subparagraph:

“(aa) be informed by the court of the reason for **[the] his or her further detention [to continue]**; or”;

- (c) by the substitution in the Afrikaans text for paragraph (b) of the said subsection (6) of the following paragraph:

“(b) ’n **[Beskuldigde]** Gearreesteerde persoon beoog in paragraaf (a)(i) is nie daarop geregtig om buite gewone hofure na die hof gebring te word nie.”.

Amendment of section 59A of Act 51 of 1977, as inserted by section 3 of Act 85 of 1997

4. Section 59A of the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the substitution in the Afrikaans text for subsection (1) of the following subsection:

- “(1) ’n Prokureur-generaal, of ’n aanklaer deur die betrokke prokureur-generaal skriftelik daartoe gemagtig, kan, ten opsigte van die misdrywe bedoel in Bylae 7 en in oorleg met die polisiebeampte belas met die ondersoek, die vrylating van ’n beskuldigde op borgtog magtig.”; and
- (b) by the substitution in the Afrikaans text of subsection (3) for the words preceding paragraph (a) of the following words:
 “Die uitwerking van borgtog wat ooreenkomstig hierdie artikel verleen is, is dat [**’n beskuldigde**] die persoon wat in bewaring is, uit bewaring vrygelaat word—”.

Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995 and amended by section 4 of Act 85 of 1997

5. Section 60 of the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 “(b) Subject to the provisions of section 50(6)[(b)] (c), [**if a court refers an accused to another court for trial or sentencing**] the court referring [**the**] an accused to any other court for trial or sentencing retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time.”; and
- (b) by the substitution in subsection (14) for the words preceding the proviso of the following words:
 “Notwithstanding [**any law**] anything to the contrary contained in any law, no accused shall, for the purposes of bail proceedings, have access to any information, record or document relating to the offence in question, which is contained in, or forms part of, a police docket, including any information, record or document which is held by any police official charged with the investigation in question, unless the prosecutor otherwise directs:”.

CLAUSE 9

Clause rejected.

CLAUSE 12

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

Amendment of Schedule 5 to Act 51 of 1977, as substituted by section 9 of Act 85 of 1997

8. Schedule 5 to the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the deletion, in the Afrikaans text, of the fifth offence;

- (b) by the substitution in the Afrikaans text of the sixth offence for the words preceding paragraph (a) of the following words:
 “’n Misdryf bedoel in artikel 13(f) van die Wet op Dwelmmiddels en Dwelmsmokkelary, 1992 (Wet No. 140 van 1992), indien [**bewys is**] beweer word dat—”;
- (c) by the substitution in the Afrikaans text for paragraph (b) of the ninth offence of the following paragraph:
 “(b) waarby bedrae van meer as R100 000,00 betrokke is, indien [**bewys is**] beweer word dat die misdryf deur ’n persoon, groep persone, sindikaat of ’n onderneming handelende in die uitvoering of ter bevordering van ’n gemeenskaplike doel of sameswering gepleeg is; of”;
 and
- (d) by the substitution in the Afrikaans text of paragraph (c) of the said ninth offence for the words preceding subparagraph (i) of the following words:
 “indien [**bewys is**] beweer word dat die misdryf gepleeg is deur ’n wetstoepassingsbeampte—”.

Amendment of Schedule 6 to Act 51 of 1977, as added by section 10 of Act 85 of 1997

9. Schedule 6 to the Criminal Procedure Act, 1977, is hereby amended by the substitution in the Afrikaans text for subparagraph (iii) of paragraph (a) of the second offence of the following subparagraph:

“(iii) deur ’n persoon wat [**skuldig bevind is aan**] aangekla word van die pleging van twee of meer misdrywe van verkragting; of”.

Amendment of Schedule 7 to Act 51 of 1977, as added by section 10 of Act 85 of 1997

10. Schedule 7 to the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the substitution for the heading thereto of the following heading:

“SCHEDULE 7

(Section [60(6)(b)] 59A)”;

- (b) by the substitution for the ninth offence of the following offence:
 “Theft and any offence referred to in section 264(1)(a), (b) and (c), if the amount involved in the offence exceeds [**R2 000,00**] R200,00 but does not exceed R20 000,00.”;
 and
- (c) by the deletion, in the Afrikaans text, of the tenth offence.

CLAUSE 13

Clause rejected.

CLAUSE 14

1. On page 14, from line 47, to omit paragraph (b) and to substitute:

- (b) any member of the South African Police Service or of any municipal police service established under the South African Police Service Act, 1995 (Act No. 68 of 1995), who—
 (i) acts in the course and within the scope of his or her duties as such a member and in accordance with the requirements of the said Act, any other law or any order, instruction, determination or regulation issued or made under the said Act; or

- (ii) undergoes training in terms of any determination or regulation issued or made under the said Act;

2. On page 18, after line 37, to insert the following proposed new section:

Temporary exemption

16C. (1) Notwithstanding anything to the contrary contained in section 16A(1), the Minister of Justice may in consultation with the Minister for Safety and Security exempt—

- (a) any employer who uses the services of any employee exclusively for the purposes of the protection or safeguarding of the personnel, property or business interests of that employer; and
 (b) any employee or group of employees whose services are so used,

on application in writing by the employer, from the provisions of the said section 16A(1) for such period and on such conditions as may be determined by the Minister of Justice in consultation with the Minister for Safety and Security.

(2) The Minister of Justice may in consultation with the Minister for Safety and Security at any time withdraw an exemption contemplated in subsection (1) or withdraw, amend or supplement any condition on which any such exemption was granted.

(3) The Minister of Justice shall notify in writing any employer affected by a decision under this section of such decision.

NEW CLAUSES

1. That the following be new Clauses to follow Clause 15:

Amendment of section 1 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994 and section 1 of Act 77 of 1995

13. Section 1 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended—

- (a) by the substitution for the definition of “monitor” of the following definition:

“ ‘monitor’ includes the recording of conversations or communications by means of a monitoring device;”;

- (b) by the substitution for the definition of “monitoring device” of the following definition:

“ ‘monitoring device’ means any instrument, device or equipment which is used or can be used, whether by itself or in combination with any other instrument, device or equipment, to listen to or record any conversation or communication;”.

Amendment of section 2 of Act 127 of 1992

14. Section 2 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended—

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) intentionally monitor [**a**] any conversation or communication by means of a monitoring device so as to gather confidential information concerning any person, body or organization.”; and

(b) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) conversations by or with, or communications to or from, a person, body or organization, whether a telecommunications line is being used in conducting those conversations or transmitting those communications or not, be monitored in any manner by means of a monitoring device.”.

CLAUSE 17

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

Amendment of section 4 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994 and section 4 of Act 18 of 1996

16. Section 4 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended—

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) take possession of and examine any postal article or telegram to which the direction applies, or, as the case may be, listen in to or make a recording of any conversation or communication to which the direction applies;” and

(b) by the substitution for subparagraph (iii) of paragraph (b) of the said subsection (2) of the following subparagraph:

“(iii) an officer of at least the rank of assistant-commissioner in the South African Police Service or a member of the said Police Service occupying a post on at least the same level,”.

Amendment of section 5 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994 and section 4 of Act 18 of 1996

17. Section 5 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) make available the necessary facilities and devices and enable the member who is authorized in terms of section 4(1) to execute a direction or to assist with the execution of a direction, to effect the necessary connections in order to monitor conversations or communications to which the direction applies.”.

Substitution of long title of Act 127 of 1992

18. The following long title is hereby substituted for the long title of the Interception and Monitoring Prohibition Act, 1992:

“ACT

To prohibit the interception of certain communications and the monitoring of certain conversations or communications;

to provide for the interception of postal articles and communications and for the monitoring of conversations or communications in the case of a serious offence or if the security of the Republic is threatened; and to provide for matters connected therewith.”.

Amendment of section 9 of Act 114 of 1993

19. Section 9 of the Recognition of Foreign Legal Qualifications and Practice Act, 1993, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) **[Any section of this]** This Act shall [subject to the provisions of subsection (3)] cease to have effect **[after the expiry of one year from the commencement of that section]** on 1 April 1998, but **[this]** it shall not affect the previous operation of **[that section]** this Act or any exemption granted **[in terms thereof]** thereunder.”;

(b) by the deletion of subsection (3).

CLAUSE 21

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

Amendment of section 3 of Act 85 of 1997

23. Section 3 of the Criminal Procedure Second Amendment Act, 1997, is hereby amended by the substitution in the said section 3 for the words preceding the marginal note of the following words:

“The following section is hereby inserted in the principal Act after section **[58]** 59:”.

Substitution of section 12 of Act 85 of 1997

24. The following section is hereby substituted for section 12 of the Criminal Procedure Second Amendment Act, 1997:

“Short title and commencement

[12]11. This Act shall be called the Criminal Procedure Second Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.”.

Amendment of section 1 of Act 105 of 1997

25. Section 1 of the Criminal Law Amendment Act, 1997, is hereby amended—

(a) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) The court—

- (i) shall consider the written arguments and the evidence led at the trial; and
- (ii) may, if necessary, hear oral argument on such written arguments,

and shall advise the President, with full reasons therefor, **[of the need to set aside the sentence of death, of]** on the appropriate sentence to be substituted in **[its]** the place of the sentence of death and, if applicable, **[of]** on the date to which the sentence shall be antedated.”; and

- (b) by the substitution for subsection (10) of the following subsection:

“(10) All other appeals in cases where the sentence of death was imposed and which are **[either part heard or pending before]** not disposed of by the Supreme Court of Appeal shall be disposed of by that **[court, which for that purpose shall have the powers set forth in section 322(2) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)]** Court: Provided that the said Court shall, if the Court confirms the conviction, set aside the sentence of death and impose such punishment as it considers to be proper.”.

Short title and commencement

26. (1) This Act shall be called the Judicial Matters Amendment Act, 1998.

(2) The provisions of—

- (a) sections 1, 2, 6, 7, 11 to 18 and 20 shall come into operation on a date fixed by the President by proclamation in the *Gazette*;
- (b) sections 3 to 5 and 8 to 10 shall come into operation on the date of commencement of the Criminal Procedure Second Amendment Act, 1997 (Act No. 85 of 1997);
- (c) section 19 shall be deemed to have come into operation on 1 October 1993;
- (d) section 21 shall be deemed to have come into operation on 1 April 1997;
- (e) section 22 shall be deemed to have come into operation on 16 May 1997;
- (f) sections 23 and 24 shall be deemed to have come into operation on 10 December 1997; and
- (g) section 25 shall be deemed to have come into operation on 19 December 1997.

(3) Different dates may be fixed under subsection (2)(a) in respect of different provisions of this Act.

LONG TITLE

1. On page 2, from the second line, to omit “and to make other provision in connection with the salaries or wages of former employees of an insolvent;”.
2. On page 2, from the third line, to omit “to amend the Magistrates’ Courts Act, 1944, so as to further regulate the appointment of magistrates of regional divisions; and to increase the penal jurisdiction of lower courts;”.
3. On page 2, from the eighth line, to omit “make other provision in connection with the use of force in effecting arrests” and to substitute “effect certain textual improvements”.
4. On page 2, in the fifteenth line, after “to” to insert:

make provision in connection with the monitoring of communications;
and to

5. On page 2, in the sixteenth line, after “directions” to insert:

; to amend the Recognition of Foreign Legal Qualifications and Practice Act, 1993, so as to make other provision in connection with the duration of the said Act
6. On page 2, in the nineteenth line, to omit “and”.
7. On page 2, in the twentieth line, after “improvement” to insert:

; to amend the Criminal Procedure Second Amendment Act, 1997, so as to effect certain textual improvements; and to amend the Criminal Law Amendment Act, 1997, so as to further regulate the setting aside of sentences of death